IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.1307 OF 2006

Prakash Jaganath Chikhale & Ors. ...Petitioners.
Vs.
Vaijinath Marmath Lungare. ...Respondent.

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Mr. Sangramsinh Yadav with Bharat Joshi for the Petitioners.
Mr. S.D. Thokade for the Respondent.

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**CORAM : DR.D.Y.CHANDRACHUD, J.**

**July 10, 2006.**

**P.C.**

A decree for eviction has been passed on the ground that the landlord reasonably and bona fide requires the premises for his own use and occupation. The evidence before the Trial Court was that the landlord who was an Electrical Supervisor in BHEL retired from service. His son has obtained training in electrical work and wanted to start a shop for electrical repairs and a general store. The certificates of training were produced and were marked as Exh.72. After retirement, the landlord purchased a plot at Dhankawadi, Pune. The landlord stated that he belongs

to Barshi and that he himself and his son intend to set up a joint business at Barshi. The said property originally belonged to the landlord's mother Nagubai who had sold the property at a time when the landlord was in school, studying in the IXth Standard. It has come on record that the landlord repurchased the property in 1991. The Appellate Court has held that it was the natural desire of the landlord to settle down in his own property at Barshi. There are concurrent findings of both the Courts.

On behalf of the Petitioners it has been submitted that the landlord has other property at Barshi. This was duly considered by the Courts below. The Appellate Court has noted that House Nos.2001 and 2002 are tenanted properties. In these proceedings the landlord has filed an affidavit in reply specifically denying the statement in para 7 of the Writ Petition that vacant and peaceful possession has been obtained by him from one of the tenants. That apart, the Appellate Court has noted that after the death of Nagubai, the mother of the Respondent, her share devolved on three sons including the landlord and, therefore, it

cannot be said that the Respondent has absolute right, title and interest therein. Counsel appearing on behalf of the Petitioners has fairly drawn the attention of the Court to the fact that partition proceedings are pending and are yet to culminate in a final order.

In so far as the Petitioners are concerned, they have their own property, CTS 2440, at Barshi. That property is available for the Petitioners to carry on the business. In these circumstances, it cannot be said that the concurrent findings of both the Courts suffer from any error on the face of the record. The Petition is dismissed. However, in view of the fact that the Petitioners have been occupying the property, time to vacate is granted to the Petitioners until 31st March 2007 subject to the filing of the usual undertaking in this Court within a period of two weeks from today.

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